SUPREME COURT OF THE UNITED STATES.

No. ~~209~~. 137 60.

ANDREW MASON, Pl'ff in Er.,

vs.

CHARLES G. WHEELER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GIDEON, Printer.

SUPREME COURT OF THE UNITED STATES.

No. 299.

ANDREW MASON, Pl'ff in Er.,

vs.

CHARLES G. WHEELER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

Pleas in the Circuit Court of the United States of America for the Northern District of Illinois, held at the city of Chicago, in said district, before the Hon. Thomas Drummond, District Judge of said district, and in the absence pro tempore of the Hon. John McLean, one of the Justices of the Supreme Court of the United States, sole Judge of said Circuit Court, on Saturday, the fifth day of November, in the October adjourned term of said court, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth year. WM. H. BRADLEY, Clerk.

CHARLES G. WHEELER
vs.
ANDREW MASON.

Northern District of Illinois, ss.

Be it remembered, that on the eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-nine, in the December term, A. D. 1858, of the Circuit Court of the United States for the Northern District of Illinois, came the said Charles G. Wheeler, plaintiff in this suit, Shumway, Waite, and Towne, his attorneys, and filed in open court his declaration against the said Andrew Mason, defendant in this suit, in a plea of trespass and ejectment, together with a notice to the said defendant and affidavit of service thereof upon the defendant; also at the same time filed his bond for costs in said entitled cause, which said bond for costs, declaration, notice, and affidavit of service, are in the words and figures following, to wit:—

(*Bond for Costs.*)

United States of America, Northern District of Illinois, ss.

Circuit Court, December term, A. D. 1858, to wit, January 11, 1859.

CHARLES G. WHEELER
vs.
ANDREW MASON.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of the court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against.

Dated this 11th day of January, A. D. 1859.

SHUMWAY, WAITE, and TOWNE.

Endorsed: Filed Jan'y 11th, A. D. 1859.

WM. H. BRADLEY, Clerk.

(*Declaration.*)

United States of America, Northern District of Illinois, ss.

United States Circuit Court, December term, A. D. 1858.

Charles G. Wheeler, who is a citizen of the State of Massachusetts, by Shumway, Waite and Towne, attorney, complains of Andrew Mason, who is a citizen of the State of Illinois, in a plea of trespass and ejectment.

For that whereas heretofore, to wit, on the thirtieth day of December, in the year eighteen hundred and fifty-eight (A. D. 1858), at and within the county of Cook, and Northern District of Illinois, the said plaintiff was possessed as of his own demand in fee simple, of that certain tract or parcel of land, with the appurtenances, situate in the county of Cook, in the said Northern District of Illinois, and described as follows, to wit: The west one hundred (100) feet of the south forty (40) feet of lot ten (10), in block ten (10), in the fraction section fifteen (15) addition to the original town (now city) of Chicago, which said premises exceed in value the sum of five hundred dollars, and which the said plaintiff claims in fee simple.

And the said plaintiff being so possessed thereof, the said defendant, afterwards, to wit, on the same day and year last aforesaid, entered into the said premises and ejected the said plaintiff therefrom, and from the time last aforesaid has unlawfully withheld, and does now unlawfully withhold, from the said plaintiff, the possession thereof, to the damage of the said plaintiff of the sum of five hundred dollars, and therefore he brings suit, etc.

SHUMWAY, WAITE & TOWNE,
Att'ys for Plaintiff.

(*Notice.*)

To Andrew Mason, the above named defendant:—

You are hereby notified that the declaration, with a copy of which you are now herewith served, and to which this notice is attached, will be filed in the Circuit Court of the United States for the Northern District of Illinois, on the third day of January, A. D. 1859, and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration, within twenty days after the entry of said rule, and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in said declaration.

Dated this thirty-first day of December, A. D. 1858.

SHUMWAY, WAITE & TOWNE,
Att'ys for Plaintiff.

(*Affidavit of Service.*)

State of Illinois, County of Cook, ss.

Oscar Brewster, being duly sworn, says that on the fourth day of January, A. D. 1859, he served a copy of the within declaration and notice on the within named Andrew Mason, by handing him a copy thereof. O. BREWSTER.

Subscribed and sworn to this 10th day of January, 1859.

[SEAL.] EDWARD P. TOWNE, Notary Public.

Endorsed: Filed Jan'y 11th, 1859.

WM. H. BRADLEY, Clerk.

And on the same day, to wit, on Tuesday, the eleventh day of January, in the year A. D. 1859, in the December term, A. D. 1858, of said court, the following proceedings were had in said court in said entitled cause, and entered of record to wit:—

(*Rule to Plead.*)

CHARLES G. WHEELER vs. ANDREW MASON. } Ejectment.

Now comes the plaintiff, by Messrs. Shumway, Waite and Towne, his attorneys, who file his declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant, and on their motion it is ordered that the cause be docketed, and that the defendant be ruled to plead within twenty days, or that his default be entered.

And afterwards, to wit, on the thirty-first day of January, in the year last aforesaid, came the said defendant, Andrew Mason, in his own proper person, and filed in the office of the clerk of said court, his plea in said entitled cause, which said plea is in the words and figures following, to wit:—

(*Plea in Abatement.*)

United States of America, Northern District of Illinois, ss.

In Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois.

ANDREW MASON ads. CHARLES G. WHEELER. } Ejectment.

And the said Andrew Mason, the above named defendant, in his own proper person, comes and defends the force and injury, and says that the court ought not to take, nor will take, cognizance of the said plea of the said plaintiff, because he says that long before

and at the time of the filing of the said declaration of said plaintiff herein, and the entry of the rule to plead upon this defendant thereon, the said land in the said pl'ff's said declaration mentioned, belonged to, and was, and from thence hitherto hath been, and still is, the property of *of* one William Wheeler, and that the said William Wheeler, long before and at the time of the filing of the said declaration of said plaintiff herein, and the entry of said rule to plead, was, and from thence hitherto hath been, and still is, a citizen and resident of the city of Chicago, county of Cook, and State of Illinois, and of said Northern District of Illinois, and not a resident of any other State or district.

And this defendant further avers, that the said land in said declaration mentioned was shortly before the commencement of this suit fraudulently, collusively and covinously conveyed to the said plaintiff by him, the said William Wheeler, to the fraudulent end, and for the fraudulent purpose, and with the fraudulent intent, and not otherwise, of enabling the said William Wheeler fraudulently to commence and prosecute this suit in this court, in the name of the said plaintiff as a non-resident of said district, and that the said Wm. Wheeler still remains and is the actual owner of said land in said declaration mentioned and set out.

And said def't further avers, that at the time of the filing of said pl'ff's said declaration herein, and the entry of the rule herein thereon, he, this def't, was, and from thence hitherto hath been, and still is, a resident of the city of Chicago, county of Cook, and State of Illinois, and of the Northern District thereof, and not a resident of any other State or district.

And this def't therefore further avers that the cognizance of the said plea of the said plaintiff belongs exclusively to one of the courts in the county of Cook, and State of Illinois, to wit, to the Circuit Court of Cook County, or the Cook County Court of Common Pleas in said county of Cook, and State of Illinois, and not to this court; all of which the said defendant is ready to verify, wherefore he the said def't prays judgment if this said court will or ought to take cognizance of the said plea against him, the said defendant, as aforesaid, &c.

ANDREW MASON.

United States of America, Northern Dist. of Illinois, ss.

Personally comes Andrew Mason, and being duly sworn on oath, declares and says that he is the defendant in the foregoing cause, and that the foregoing plea by him subscribed, is true in substance and in fact, to the best of this deponent's knowledge and belief.

ANDREW MASON.

Sworn to and subscribed before me this 31st day of January, A. D. 1859.

WM. H. BRADLEY, Clerk.

Sworn to and subscribed before me as amended, this 11th day of Feb., A. D. 1859. WM. H BRADLEY, Cl'k.

Endorsed: Filed January 31st, '59.
WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on Thursday, the third day of February, in the year last aforesaid, in the December term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

On motion of the defendant by his attorney, leave is granted him to amend his plea herein.

And afterwards, to wit, on the tenth day of February, in the year last aforesaid, came again the said plaintiff, by his said attorneys, and filed in the office of the clerk of said court, his demurrer to the plea of the said defendant in said entitled cause, which said demurrer is in the words and figures following, to wit:—

(*Demurrer.*)

United States of North America, Northern District of Illinois.
Circuit Court within and for said district.

CHARLES G. WHEELER
vs.
ANDREW MASON.

And now comes the said plaintiff and says that said plea by the defendant above pleaded, and the several matters and things herein contained, in manner and form as pleaded, are insufficient in law to be replied to, and this he is ready to verify, wherefore he demurs, &c.
By SHUMWAY, WAITE & TOWNE, Att'ys.

Endorsed: Filed Feb'y 10th, 1859
WM. H. BRADLEY, Cl'k.

And on the same day, to wit, on Thursday, the tenth day of February, in the year last aforesaid, in the December term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

(*Demurrer sustained.*)

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

Now come the parties by their attorneys, and the court being fully advised on the demurrer of the plaintiff to the defendant's plea, sus-

tains said demurrer, and on motion of the defendant by his attorneys, leave is granted him by the court to amend his plea, to which the plaintiff by his attorney excepts, and files his replication.

Which said replication filed by the said plaintiff by his said attorneys, to the said defendant's plea as amended, is in the words and figures following, to wit:—

(*Replication.*)

The United States of North America, Northern District of Illinois.

Circuit Court within and for said district.

CHARLES G. WHEELER
vs.
ANDREW MASON.

And now comes the plaintiff and says that said writ and declaration ought not to abate by anything in said plea contained, because he says that the property, &c., in said declaration mentioned was the property and estate of the plaintiff, and not of the said William Wheeler, as in said plea supposed, and the title of the same was in the plaintiff, and the same was not conveyed to plaintiff for the fraudulent purpose and intent in said plea alleged, and of this he puts himself upon the country, &c.

And the defendant does the like, &c., and he prays judgment, &c.

By SHUMWAY, WAITE & TOWNE, Pl'ff's Att'ys.

Endorsed: Filed Feb'y 10th, 1859.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on Friday, the eleventh day of February, in the year last aforesaid, in the December Term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

(*Trial on Plea in Abatement.*)

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

Now come the parties, by their attorneys, and issue being joined upon the plea of the defendant to the jurisdiction of the court, thereupon come a jury of good and lawful men, to wit, Robert H. Howe, James R. White, John G. Govin, James S. Spent, S. M. Rossiter, Daniel Mullins, Thomas Barrett, Edward Matthews, Jerome Petrie, Jason Duncan, Randolph Burt and James Corbitt, who were duly elected, tried and sworn well and truly to try said issue, and after hearing the evidence the jury returned into court the following verdict, to wit: We, the jury, find the issue for the plaintiff, and upon said finding it is ordered by the court that the defendant plead over instanter, and thereupon the defendant files his plea of the general

issue, and upon issue joined thereupon come a jury of good and lawful men, to wit, Jason Duncan, Charles Douglass, Edward R. Hanna, Thomas Barrett, George R. Webster, James S. Spent, James Corbitt, Daniel Mullins, Jerome Petrie, John G. Govin, S. M. Rossiter and Edward Matthews, who were duly elected, tried and sworn well and truly to try said issue, and after hearing the evidence the jury returned into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration, as follows, to wit: That certain tract or parcel of land, with the appurtenances, situate in the county of Cook, in the said Northern District of Illinois, and described as follows, to wit: The west one hundred (100) feet, of the south forty (40) feet, of lot ten (10), in block ten (10), in the fractional section fifteen (15), addition to the original town (now city) of Chicago. We further find the estate established in the plaintiff on trial to be an estate in fee simple, and assess his damages at the sum of one cent. Whereupon the defendant, by his attorney, move the court for a new trial herein.

Which said plea of the general issue filed by the defendant, by his attorney, in said entitled cause, is in the words and figures following, to wit:—

(*Plea of General Issue.*)

United States of America, Northern District of Illinois, ss.

In the Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois.

CHARLES G. WHEELER
vs. } Ejectment.
ANDREW MASON.

And the said defendant, by Dow & Fuller, his attorneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said supposed trespass and ejectment above laid to his charge, or of any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this he the said defendant puts himself upon the country, &c.

DOW & FULLER, Def't's Att'ys.

Endorsed: Filed Feb'y 11th, 1859.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on Friday, the eighteenth day of February, in the year last aforesaid, in the December Term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

(*Judgment.*)

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

Now comes the plaintiff, by his attorneys, and moves the court for judgment upon the verdict of the jury heretofore found and entered herein.

It is thereupon considered and adjudged by the court that the plaintiff have and recover of the defendant possession of the said described real estate and premises, according to the force, form and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the said defendant the sum of one cent, his damages so as aforesaid assessed together with his costs by him about his suit in this behalf expended, amounting to the sum of forty dollars and eighty cents, and that he have execution therefor.

And afterwards, to wit, on Monday, the seventh day of March, in the year last aforesaid, in the March adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

(*Cost paid and Judgment vacated.*)

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

Now comes the defendant, by Dow & Fuller, his attorneys, and moves the court to set aside and vacate the judgment entered in this cause, on Friday, the eighteenth day of February, A. D. 1859, and for a new trial of the same under the statute; and it appearing to the court that all the taxed costs herein have been paid by the defendant, it is therefore ordered by the court that said judgment be set aside and vacated and the cause reinstated upon the docket and a new trial of the same awarded.

And afterwards, to wit, on Monday, the thirty-first day of October, in the October adjourned term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

(*Trial.*)

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

Now come the parties, by their respective attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit, E. B. Kingsley, Charles M. Waterbury, Charles Sisson, William F. Cady, Frederick Tupper, D. F. Carpenter, E. B. Prentis, G. H.

Jenkins, Isaac W. Vanhozen, Patrick Higgins, John B. Dusenbury, D. A. B. Adams, who were duly elected, tried and sworn well and truly to try said issue, and after hearing the evidence and arguments of counsel and receiving instructions from the court, the jury retired to consider of their verdict, and by agreement of the parties, by their attorneys, it is ordered by the court that the jury, when they may have agreed upon a verdict, shall sign and seal the same and deliver the same to the clerk, and disperse and meet the court at ten o'clock to-morrow morning.

And afterwards, to wit, on Tuesday, the first day of November, in the October adjourned term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

(*Verdict.*)

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

Now come again the parties by their attorneys, and now come also the jury heretofore empanelled in this cause, and return into court the following verdict, to wit:—

We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration as follows, to wit: That certain tract or parcel of land with the appurtenances, situate in the county of Cook, in the said Northern District of Illinois, and described as follows, to wit: The west one hundred (100) feet of the south forty (40) feet of lot ten (10), in block ten (10), in the fractional section fifteen (15), addition to the original town (now city) of Chicago. We, the jury, also find the estate established in the plaintiff on trial, to be an estate in fee simple, and assess his damages at the sum of one cent. Whereupon the defendant by his attorney, moves the court for a new trial herein.

And on the same day, to wit, on the first day of November, in the year last aforesaid, came again the said defendant by his said attorneys, and filed in the office of the clerk of said court his motion and reasons for a new trial in said entitled cause, which said motion and reasons are in the words and figures following, to wit:—

(*Motion for new Trial.*)

United States of America, Northern District of Illinois, ss.

In Circuit Court of the United States for the 7th Circuit and Northern District of Illinois.

CHARLES G. WHEELER
vs.
ANDREW MASON. }

And now comes the said defendant by Dow and Fuller, his attor-

neys, and moves the court to set aside the verdict heretofore rendered herein, and grant a new trial of said cause, for the following reasons, to wit:—

1st. The verdict was against the law.

2d. The verdict was against the evidence and the weight of evidence.

3d. The verdict was rendered under a misapprehension of the law.

4th. Because the court erred in its charge to the jury, and thereby the jury were misled as to the question of fact arising from the law in the case.

DOW & FULLER, Att'ys for the Def't.

Endorsed: Filed Nov. 1st, 1859.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on Saturday the fifth day of November, in the October adjourned term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

(*Motion for new Trial overruled.*)

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

The court having fully considered and being now fully advised upon the motion of the defendant heretofore made herein for a new trial of this cause, overrules said motion, to which ruling of the court the defendant by his attorney excepts; and now comes the plaintiff by his attorney, and moves the court for judgment on the verdict rendered herein on the first inst.

It is thereupon considered and adjudged by the court that the plaintiff have and recover of the defendant, possession of the said described real estate and premises, according to the force, form and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the defendant the said sum of one cent, his damages, so as aforesaid assessed by the jury, together with his costs by him about his suit in this behalf expended, amounting to the sum of forty-two dollars and eighty cents, and that he have execution therefor.

On the trial of the above cause, the following exceptions were made and allowed, to wit:—

(*Bill of Exceptions.*)

United States of America, Northern District of Illinois, ss.

In Circuit Court of the United States for the Seventh Circuit and Northern District or Illinois.

CHARLES G. WHEELER
vs.
ANDREW MASON. } Ejectment.

Be it remembered, that on the eighth day of March, A. D. 1859, the same being one of the days of the March adjourned term, 1859, of said court, the defendant in the above entitled cause, filed his motion to be allowed to file a plea in abatement in said cause, in words and figures following, to wit:—

United States of America, Northern Dist. of Illinois, ss.

In Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois.

CHARLES G. WHEELER
vs.
ANDREW MASON.

And now the said def't by Dow and Fuller, his att'ys, comes and moves this honorable court that leave be granted to said def't to file the plea herewith presented.

1. For the reason stated in the accompanying affidavit.

2. Because the statutes of Illinois concerning suits in ejectment, allows to def't to plead de novo.

DOW and FULLER, Def't's Att'ys.

(*Plea in Abatement.*)

United States of America, Northern District of Illinois, ss.

In Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois.

ANDREW MASON
vs.
CHARLES G. WHEELER. } Ejectment.

And the said Andrew Mason, the above named defendant, in his own proper person comes and defends the force and injury, and says that this court ought not to take nor will take cognizance of the said plea of the said plaintiff, because he says that long before and at the time of the commencement of this suit and the filing of the said plaintiff's declaration herein, and the entry of the rule to plead herein upon this defendant, he the said plaintiff was and from thence hitherto hath been and still is a citizen of the county of Cook, and State of Illinois, and of the Northern District thereof, and not a citizen of the State of Massachusetts, as is by said plaintiff in his said declara-

tion alleged; and the said defendant further says, that long before and at the time of the commencement of this suit and the filing of the said plaintiff's declaration herein, and the entry of the rule to plead as the defendant herein, he, the said defendant, was and from thence hitherto hath been and still is a citizen and resident of the county of Cook, and the State of Illinois, and of the Northern District thereof, and that the cognizance of the said plea of the said plaintiff belongs exclusively to one of the courts of the said county of Cook, and State of Illinois, to wit, to the Cook County Court of Common Pleas, or to the Circuit Court of Cook County of said county of Cook, and State of Illinois, and not to this court; all of which the said defendant is ready to verify. Whereupon he, the said def't, prays judgment if this said court here will or ought to take cognizance of the said plea of the said plaintiff against him the said defendant as aforesaid. ANDREW MASON.

United States of America, Northern District of Illinois, ss.

Personally comes Andrew Mason, and being duly sworn on oath declares and says, that he is the defendant in the above cause, and subscribed the foregoing plea, and that the same is true in substance and in fact. ANDREW MASON.

Sworn to and subscribed before me this 12th day of February, A. D. 1839. WM. H. BRADLEY, Cl'k.

Endorsed: Filed March 8, 1859.

WM. H. BRADLEY, Cl'k.

(*Bill of Ex. con'd.*)

And in support thereof his affidavit in words and figures following, to wit:—

United States of America, Northern District of Illinois, ss.

In Cir. C't of the United States for the Northern District of Illinois.

(*Mason's Affidavit.*)

ANDREW MASON
ads.
CHARLES G. WHEELER.

Personally comes Andrew Mason, and being duly sworn on oath declares and says, that he is the defendant in the above entitled cause. This deponent further says, that upon the entry of the rule to plead in the above cause, he informed his counsel of the facts which he believed established that the property in question had been conveyed by the owner thereof, William Wheeler, to the above named plaintiff, and that in accordance with these facts the plea hereinbefore filed was drawn, sworn to, and filed by this defendant in this cause; that on the day of the entry of said rule, the 11th day

of January, A. D. 1859, and before that time, and from thence hitherto and up and until the 11th day of February, A. D. 1859, this defendant was in utter and entire ignorance of who the said plaintiff was; that he never had known him, and had no reason to suspect or to believe that he, said plaintiff, was any other than a citizen of Massachusetts, as alleged in said plaintiff's declaration, and did in fact suppose that said plaintiff was the brother of William Wheeler (the actual owner of said property as this deponent believed), and that said property was conveyed to said plaintiff with the intent of having this cause brought in this court, and having said property reconveyed after the close of this litigation.

And this deponent further says, that on the trial of the issue joined on this def't's said plea, the said William Wheeler testified that the said plaintiff was his son, of the age of twenty-two years, a student in the Lawrence Scientific School, Massachusetts; that he, said William Wheeler, was obliged to send his said son for his support other money than the revenue arising from the land in question, and that his said son had no other property than that so conveyed by his father to him.

And this deponent further says, that after the adjournment of this court on said 11th day of February, he, this defendant, made inquiries in regard to the said plaintiff, and has ascertained that the facts stated by said William Wheeler are true, and that the said plaintiff is a student in Cambridge, in Massachusetts; that he returns to Chicago and to his father's house during the vacation at said Scientific School (or, as this deponent can prove, that he had returned at many of those times when, as this deponent believes, he can prove the vacation took place at said school); and that, as this deponent further states upon belief, he can prove that said plaintiff has never abandoned his residence and citizenship in the city of Chicago and Northern District of Illinois, but has the intention to return to said city as a place of residence.

And this deponent further says, that he believes he can establish, if he be allowed to file his plea setting forth that said plaintiff is a citizen of the Northern District of Illinois, by proof in Cambridge, Massachusetts, that said plaintiff has always hailed from Chicago, and has never considered himself a citizen of any other city, State, or district, than the city of Chicago, State of Illinois, and Northern District of Illinois.

And this deponent further says, that as against the actual claimants of the present possession of the property in question, he is advised by his counsel, and verily believes, he has a defence upon the merits that he does not make this application for delay, but that justice may be done in the premises, and that if said cause were instituted in the State Court, where it of right belongs, this defendant could substantiate and make out his said defence.

ANDREW MASON.

Sworn to and subscribed before me, this 12th day of February, A. D. 1859.

WM. H. BRADLEY, Clerk.

Endorsed: Filed March 8, 1859.

WM. H. BRADLEY, Clerk.

(*Bill of Ex. con. Motion overruled.*)

And the court having considered the same, thereupon overruled said motion, to which decision and ruling of said court the defendant, by his counsel, duly then and there excepted.

And on the 31st day of October, A. D. 1859, the same being one of the days of the October term of said court, this cause coming on for trial, and a jury having been empanelled to try the issue joined, the plaintiff, to maintain and prove the issue on his part, introduced a certified copy of the original conveyance from the school trustees of the county of Cook, of the property described in the declaration in this cause to William Wheeler, bearing date the day of A. D. 18 , and no exception was taken to the introduction of said copy; and a deed from said William Wheeler to the plaintiff, dated Dec. 29th, 1858, and filed for record on the 30th day of December, A. D. 1858, in the office of the clerk of the Circuit Court of Cook County and ex-officio recorder of deeds in and for said county, and duly recorded Book of deeds, page

(*Deed from William Wheeler to C. G. Wheeler.*)

This indenture, made this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, A. D. 1858, between William Wheeler, of the city of Chicago, Cook County, Illinois, party of the first part, and Charles Gilbert Wheeler, of the city of Cambridge, State of Massachusetts, party of the second part, witnesseth; that the said party of the first part, in consideration of one dollar ($1 00) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged by these presents, doth release, alien, convey, and quit claim unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim, and demand, which the said party of the first part hath in and to the following described pieces of land, situated in the county of Cook, and State of Illinois, described as follows, to wit: the west one hundred (100) feet of the south forty (40) feet of lot ten, in block ten (10), in the fractional section fifteen (15), addition to the original town (now city) of Chicago.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hereunto set his hand and seal, the day and year first above written.

WILLIAM WHEELER. [SEAL.]

State of Illinois, Cook County, City of Chicago, ss.

I, Henry Brookes, a notary public in and for the city of Chicago, in said county, in the State aforesaid, do hereby certify, that William Wheeler, who is personally known to me as the real person whose name is subscribed to the within deed, appeared before me this day in person, and acknowledged that he executed and delivered the said deed as his free and voluntary act, for the use and purpose therein set forth.

Given under my hand and notarial seal, this thirtieth day of December, in the year of our Lord one thousand eight hundred and fifty-eight (A. D. 1858).

[SEAL.] HENRY BROOKES,
Notary Public.

Endorsed on back:—

State of Illinois, County of Cook, 11,558.

This instrument was filed for record the 30th day of December, at the hour of o'clock, 1858, and duly recorded in book 160 of deeds, page 391. WM. D. CHURCH, Cl'k.

(*Bill of Ex. Con.*)

Whereupon the plaintiff rested his case. [The title of William Wheeler up to the time he conveyed to his son was admitted.]

(*Hern's Evidence.*)

The defendant then called as a witness, Henry F. Hern, who being duly sworn, testified as follows: That he had a lease of the property in question from W. H. Adams; this is the lease; witness here produced lease of the property bearing date 1855, and terminating in May, A. D. 1860, executed by W. H. Adams, and running to witness.

(*Lease from Adams to Hern.*)

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and fifty-five, between Wm. H. Adams, of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and H. F. Hern, of same place, party of the second part, witnesseth; that the said party of the first, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators, and assigns, has demised and leased to the said party of the second part, all those premises situate, lying, and being in the city of Chicago, in the county of Cook, and in the State of Illinois, known and described as follows, to wit:

Part of sub lots one and two of lot ten (10), in block ten (10), fractional section fifteen, addition to Chicago, being about seventy-eight feet on State Street by about one hundred feet on Tyler Street. To have and to hold the said above described premises with the appurtenances unto the said party of the second part, his executors, administrators, and assigns, from the first day of April, in the year of our Lord one thousand eight hundred and fifty-five, for and during and until the first day of May, A. D. 1860; and the said party of the second part, in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, his heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of three hundred dollars per annum, payable quarterly, in advance; and also that he will pay, or cause to be paid, all taxes that may be laid, charged, or assessed on said premises, pending the existence of this lease, and if said party of the second part shall fail or neglect to pay said taxes after the same shall become due and payable, the said party of the first part may pay the same at any time thereafter, and the rent of all said payments shall be deemed as so much additional rent due and payable by the party of the second part, and may be collected in the same manner as other rents due hereon.

And the said party of the second part further covenants with the said party of the first part that said second party has received said demised premises in good order and condition, and that at the expiration of the time of this lease mentioned he will yield up the said premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part—loss by fire or inevitable accident or ordinary wear excepted—and also will keep said premises in good repair, during this lease, at his own expense.

It is further agreed by the said party of the second part that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease without the written assent of said party of the first part first had and obtained thereto.

And the said party of the second part, his executors, administrators, and assigns, agree, further, to pay (in addition to the rents above specified) all water rents and assessments taxed, levied, or charged on said premises, for and during the time for which the lease is granted, and save said premises and the party of the first part harmless therefrom, and that he will keep said premises in a clean and healthy condition in accordance with the ordinance of the city and directions of the drainage commissioners.

It is expressly understood and agreed by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment, whereon the same ought to be paid as aforesaid, or if default shall be made in any of

the covenants herein contained, to be kept by the said party of the said part, his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, at his election, to declare said term ended, and into the said premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in his first and former estate, and to distrain for any rent that may be due thereon upon any property belonging to the said party of the second part, whether the same be exempt from execution and distress by law, or not; and the said party of the second part, in that case, hereby agree to waive all legal rights which he may have to hold or retain any such property under any exemption law now in force in this State, or in any other way, meaning and intending hereby to give the said party of the first part, his heirs, executors, administrators, or assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding; and if at any time said term shall be ended at such election of said party of the first part, his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, his executors, administrators, and assigns do hereby covenant and agree to surrender and deliver up said above described premises and property peaceably to said party of the first part, his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid, and if he shall remain in possession of the same ten days after notice of such default, or after the termination of this case in any of the ways above named, he shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further covenanted and agreed, by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part. In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written.

WM. H. ADAMS, [SEAL.]
H. F. HERN. [SEAL.]

(*Bill of Ex. Con'd.*)

William Wheeler knew of the existence of this lease, and at the time the defendant and myself were building on the lot, Wheeler

promised me to give us a new lease of the premises at the expiration of the lease of Adams to us, or to purchase of us the improvements at a fair valuation, that is, if we would put up a good building. We did erect a first class frame building, at a cost of about four thousand seven hundred dollars. Wheeler was the owner of the property and Adams held by a lease from him. Wheeler told me, in 1856, that he had given Adams a lease of the property for five years, to terminate when ours did, in 1860. He said he would give me a five years' lease or buy the betterments at the expiration of my lease from Adams. Wheeler never demanded ground rent of me, and Adams never made a demand of me for rent on his lease to me.

Upon cross-examination the witness testified:—

Mason entered into possession under me; I was turned out by an action of forcible detainer. They got a default on me in the Circuit Court, and turned me into the street before I knew it.

William Wheeler was then called by the defendant, and being duly sworn, testified as follows:—

I have resided in Chicago twenty-one years; am the grantor in the deed to the plaintiff; pl'ff is my son; he was living in Massachusetts when the deed was made; it was made in Chicago; I carried it to the recorder's office; I suppose I told him before that I was about to make him a deed; I think I must have informed him about the deed; don't remember having testified on the former trial that I wrote my son I was going to convey him some land, but I did not know what; can't tell—may have; probably my recollection was better then than now; about the time the deed was made I think I wrote to him; I never sent the deed to him; I think I must have got it out of the recorder's office; I received rent from Adams in October and November, A. D. 1857; received ground rent in January, 1858, from Adams; received no ground rent during the summer of 1858; received ground rent for the premises in question from Mr. Covert and Mr. Wilcox, or jointly, in the fall of 1858; from October, 1858, I received rent monthly from Covert and Wilcox as long as I held the premises; after the conveyance of the premises to my son, I received the ground rent as his agent, and have received it almost to date, or nearly so, up to within a month or so; have been receiving ground rent for the premises from Covert and Wilcox during all the pendency of this suit, either for myself or my son; I took ground rent from Covert and Wilcox first in October, 1858; I think it was Wilcox that suggested bringing this action in here by my conveying the property to my son, who was in Massachusetts; I have been receiving fifty-eight dollars per month from Covert and Wilcox for the premises; Adams paid me one thousand dollars per year as rent for this and some other property; Covert and Wilcox paid me ground rent for what they leased, seven hundred dollars per annum; the premises they leased includes that which the defendant occupies, and considerable more.

Upon cross-examination the witness testified as follows:—

Adams had a lease from me in writing; the Adams lease was terminated Oct. 1st, 1858, for non-payment of rent; made a demand for the rent on the premises; back rent had accumulated to the amount of about $1,200; made two demands; once between sundown and dark, once in the forepart of the day; Adams gave me all back rents due him and a little house; the lease was terminated and given up; made one of these demands Oct. 1st, 1858; the other was before that; the agreement of termination was between Adams and myself; accepted the termination of the lease, [and it was terminated by the consent of both parties.]

On re-examination the witness testified:—

On one occasion I rode up there with Mr. Adams and Mr. Allen, and made a demand at that time of the rent due; made the demand of Adams; he rode up there with me in my buggy; I carried a bill of the balance of rent due, and made a demand and a declaration of forfeiture for non-payment; got out of the buggy; don't know whether I stood on the sidewalk or in the alley; went for the purpose of making the demand, and no other; told Adams before we started what I wished to do; went in one time to the carpenter shop; think probably Mr. Mason was there; I made a demand of all the rent; this included the whole premises, and was not alone the part occupied by the defendant; had the lease at the time I went with Adams; think I have the copy at home; I took Adams' copy up, and think I have it. [It appeared by the testimony of this witness, who was a man of large means, that he had made the deed to his son of the lot on a gift to him by way of advancement.]

The defendant here rested his case, and the plaintiff, by way of rebutting testimony, offered in evidence certain papers of an action of forcible detainer against Henry F. Hern, and in favor of W. H. Adams, before Calvin De Wolf, a Justice of the Peace in and for the county of Cook, and State of Illinois and the docket of said justice. The def't admitted that the papers and docket were the originals, but by his counsel objected to their introduction in evidence, which objection the court overruled. [The court permitted the proceedings in the forcible detainer case to be introduced for the purpose of showing that the lease Adams and Hern was terminated and forfeited, and to show that Adams had obtained possession of the property, that is, so far as the proceedings tended to establish those facts.] To which ruling of the court the def't, by his counsel, then and there duly excepted. The pl'ff then introduced in evidence the justice's docket, from which it appeared that on the day of A. D. 1858, W. H. Adams commenced an action of forcible detainer against Henry F. Hern, for a portion of the property described in the declaration in this cause; that on the 7th day of May, A. D. 1858, judgment was rendered against him, and in favor of the plaintiff, and a writ of restitution issued on the 16th day of July, 1858,

for the recovery of said premises; also the complaint filed in said cause, in words and figures following, to wit:—

(*Complaint.*)

State of Illinois, Cook County, ss.

The complaint of William H. Adams, of Chicago, in said county, who, being duly sworn, upon his oath gives Calvin D. Wolf, one of the Justices of the Peace of South Chicago, to understand and be informed that on the 1st day of April, A. D. 1855, he did demise and lease to Henry F. Hern all that piece of land known as part of sub lots one (1) and two (2), in lot ten (10), in block ten, fractional section fifteen (15), addition to Chicago, being about 78 feet on State Street by 100 feet on Tyler or Congress Street, with the appurtenances, for and during the term following, to wit, from said date to the 1st day of May, A. D. 1860, said Hern then and thereby agreeing to pay for said demised premises, as rent, three hundred dollars per annum, payable quarterly in advance, also all taxes legally levied, or to be levied, during said demise on the said premises, which said lease was on condition that if the said rent, or any part thereof, should be behind and unpaid on or any of the day of payment aforesaid, it might be lawful for said lessor to declare said term ended, and re-enter said premises, or any part thereof, and the same to re-possess and enjoy as of his first estate aforesaid. And affiant further saith, that by reason of the non payment of said rent, due on first day of April, A. D. 1858, the said term became and was ended, and that the same in fact hath expired, and that the said H. F. Hern will fully and without force, since the last quarter day aforesaid, hitherto held over, and still holds over, and continues in possession of the premises without the permission of this affiant, notwithstanding demand has been made in writing by this complainant upon said H. F. Hern to quit and deliver up possession thereof to him.

Therefore he prays that said H. F. Hern may be summoned to answer to the said complaint. WM. H. ADAMS.

Sworn and subscribed May 11, 1858.

C. D. WOLF, J. P., 17 in 10 A. M.

Endorsed on back: Filed June 3d, 1858.

WM. L. CHURCH, Cl'k.

(*Bill of Ex. Con'd.*)

Also a procedendo from the Circuit Court of Cook County upon the appeal taken by the said H. F. Hern.

(*Procedendo.*)

State of Illinois, Cook County, ss.

To Calvin D. Wolf, Esquire, a justice of the peace, in and for the county aforesaid, greeting:—

Although we lately by our writ of supersedure commanded you

that from proceeding any further in a certain suit then lately instituted and depending before you between William H. Adams, plaintiff, and Henry F. Hern, defendant, wherein you had rendered judgment in favor of the said plaintiff against the said defendant therein. In an action of forcible entry, detainer, and for costs, from which said judgment the said defendant had duly taken an appeal to our Circuit Court for the county aforesaid, you should entirely supersede and desist, and all proceedings in relation thereto should absolutely suspend until the further order of our said Circuit Court, yet inasmuch as such proceedings have been had upon said appeal in our said Circuit Court, that the said judgment by you so rendered as aforesaid remains in full force and effect in all respects as before the taking of the said appeal, and execution of said judgment remains to be done according to law, as appears to us of record.

Now, therefore, we command you, that without further delay you proceed on said judgment in such manner as the law directs, in all respects as if the said appeal had never been taken, our said writ of supersedure to you thereupon before directed to the contrary thereof notwithstanding.

Witness William L. Church, clerk of our said court, and the seal thereof, at Chicago, in said county, this 16th day of July, A. D. 1858.

[SEAL.] WM. L. CHURCH, Cl'k.

(*Bill of Ex. Con'd.*)

The plaintiff then called as a witness Thomas Allen, who being duly sworn testified that he was acquainted with William Wheeler; that he was present when the matter was talked over between Adams and Wheeler in relation to Wheeler's lease to Adams; that Adams stated that he was willing to surrender the lease to Wheeler; Wheeler said he would accept it; this was about a year ago; the lease was surrendered, I think, a demand was made.

Wm. Wheeler was thereupon recalled by the plaintiff, and testified as follows: I received rent from Covert and Wilcox. The first money I received after Adams surrendered his lease, I received three hundred and fifty-five dollars for back rent, understood to have been due from Hern and Mason to Adams, up to October 1st, 1858; after that Covert and Wilcox paid fifty-eight dollars per month, until recently, perhaps within a couple of months; they were to have a lease whenever I could give them possession.

On cross-examination the witness testified Covert and Wilcox have got possession partially, but not wholly. They are paying no ground rent monthly generally. It has not been regular this last month, but I intend to hold them for it. There is an agreement between Covert and Wilcox and myself, perhaps with them and Mr. Towne; made no written lease with them, they simply pay me monthly so much. It is ground rent for the whole premises, and full as much as they are worth. There are several buildings on the premises. In

the building that Mason is in, a saloon runs through the lower story, and for that ground I am receiving ground rent from Covert, Wilcox, and Towne. I don't know whether Mason claims under them or not. They are my lessees after a fashion. [It appeared from the evidence of this witness that the defendant was in possession of a part of the lot, and that the rent was paid by Covert and Wilcox upon the understanding or agreement that the witness, as agent of his son, was to obtain and deliver them possession of the whole premises, there being in fact no dispute about anything except that portion of the premises of which the defendant was in possession.] This was all the testimony in the case.

The court charged the jury in substance as follows:—

There appears to be no controversy in this case about the plaintiff's title; the title is very simple, and apparently undisputed, except as to the delivery of the deed from William Wheeler to the plaintiff, as a deed may be delivered to a stranger for the benefit of a third party, and as the deed in this case was delivered to the recorder of deeds for record, that would seem to dispose of that objection, if the jury believe that it was delivered to him or to any one else for the benefit of the plaintiff, and the court left it to the jury to say whether there had been a delivery or not.

The main question here arises upon the defence which has been interposed. A lease is introduced from Adams to Hern, under which the defendant seems to have obtained possession. A lease is also shown to have been given by Wheeler to Adams. This lease, it is said, has been declared forfeited, and therefore Mason's right is gone. If the defendant claimed through Hern, and Hern through Adams, then it was for the jury to determine under the evidence whether Hern's right of possession had ceased, and Adams's lease had been surrendered and given up; if so, it would follow, unless the defendant had some other claim, that his right of possession was gone. The only difficulty in this case grows out of Wheeler's testimony, but although that is confused, it perhaps may be reconciled with the plaintiff's right to the possession, and of this the jury will determine. It is true that the plaintiff must not only make out a legal title to the premises, but also a right to the possession at the time of the commencement of this suit. Wheeler states that after his arrangement with Adams he was to receive whatever was to come to Adams on his sublease. He has also said that he receives compensation for the property from Covert and Wilcox. It may be that it is under the arrangement with Adams that the compensation is paid him. If so, then it does not follow that there is any such leasing to Covert and Wilcox as will prevent a recovery in the case because Wheeler receives compensation. Something has been said about the right of possession at the time of the demise laid in the declaration; the time of the demise is immaterial, providing it is before the commencement of this suit.

The court was then asked by the defendant to charge the jury that the receipt of ground rent was prima facie evidence of a leasing, and the court thereupon further charged the jury that it was generally true that the receipt of ground rent was prima facie evidence of a leasing, but the court would not say that under the circumstances stated here the receipt of rent was conclusive evidence of a leasing to Covert and Wilcox, so as to prevent the recovery of that part of the premises occupied by the defendant by the plaintiff in this suit, and the court, though commenting on the evidence, left all the facts to be found by the jury.

To which charge of the court, and to each and every part thereof, the defendant, by his counsel, then and there duly excepted.

The jury found a verdict for the plaintiff, and the defendant, by his counsel, thereupon entered a motion for a new trial in words and figures following, to wit:—

(*Motion for new Trial.*)

United States of America, Northern District of Illinois, ss.

In Circuit Court of the United States for the 7th Circuit and Northern District of Illinois.

CHARLES G. WHEELER
vs.
ANDREW MASON.

And now comes the said defendant, by Dow & Fuller, his att'ys, and moves this court to set aside the verdict heretofore rendered herein, and grant a new trial of said cause for the following reasons, to wit:—

1. The verdict was against the law.
2. The verdict was against the evidence and the weight of evidence.
3. The verdict was rendered under a misapprehension of the law.
4. Because the court erred in its charge to the jury and thereby the jury were misled as to the question of fact, arising from the law in the case.

DOW & FULLER,
Att'ys for the Def't.

Endorsed: Filed Nov. 1st, 1859.
WM. H. BRADLEY, Clerk.

(*Bill of Ex. Con'd.*)

And in support thereof filed the affidavits of D. F. Carpenter and G. H. Jenkins in words and figures following, to wit:—

(*Affidavit of D. F. Carpenter.*)

United States of America, Northern District of Illinois, ss.

In Circuit Court of the United States for the 7th Circuit and Northern District of Illinois.

CHARLES G. WHEELER
vs.
ANDREW MASON.

Personally comes D. F. Carpenter, and being duly sworn on oath declares and says: That he is one of the jurors who sat on the trial of the above entitled cause, on the 31st day of October, 1859, and rendered a verdict for the plaintiff therein, on the 1st day of November, 1859; that he believed from the evidence in said cause, and still believes, that William Wheeler, the former owner of the real estate involved in said suit, had leased said premises before he made the conveyance to the plaintiff to Covert and Wilcox, and that that leasing has existed from month to month ever since, and at the commencement and during all the time of the pendency of said suit, and that the plaintiff recognized said leasing and has received ground rent from month to month thereunder up to the present time, and that on account of the leasing of the same the said plaintiff was not entitled to the possession of said premises described in his declaration at the time he brought his suit, or at any time since, and is not now.

This deponent further says that the reason he agreed to the verdict rendered in said cause, was because the defendant did not show that he had title to the premises in question, and this deponent understood the instructions of the court to be, that if the defendant had no title the jury must find for the plaintiff, if they believe the plaintiff showed a legal title to the premises irrespective of the question of right of possession. D. F. CARPENTER.

Subscribed and sworn to before me this 1st day of Nov., A. D. 1859. WM. H. BRADLEY, Clerk.

(*Affidavit of G. H. Jenkins.*)

United States of America, Northern District of Illinois, ss.

In the Circuit Court of the United States for the Northern District of Illinois.

Personally comes G. H. Jenkins and says on oath that he was one of the jurors that sat on the trial of the cause mentioned in the foregoing affidavit of D. F. Carpenter, that he has read the said affidavit, and that the reason why he agreed to the verdict rendered in said cause is the same as stated in said Carpenter's affidavit, and that he believed and still believes from the evidence given in said cause, that the said plaintiff was not entitled to the possession of the premises described in his declaration at the time he brought his suit, and

never has been hitherto, but that Covert and Wilcox were entitled to the possession thereof. G. H. JENKINS.

Subscribed and sworn to before me this 1st day of Nov., 1859.
WM. H. BRADLEY, Clerk.

Endorsed: Filed Nov. 1st, 1859.
WM. H. BRADLEY, Clerk.

(*Bill of Ex. Con'd.*)

And thereafterwards the court having heard the arguments of counsel thereon and duly considered said motion, overruled the same, to which decision and ruling of the court in overruling said motion the def't, by his counsel, then and there duly excepted. It is admitted that the real estate in controversy in this suit exceeds in value the sum of two thousand dollars.

And forasmuch as the matters and things herein contained do not otherwise appear, the defendant prays that this, his bill of exceptions, may be signed and sealed, and made a part of the record of this cause, which is done.

Exceptions allowed. THOMAS DRUMMOND. [SEAL].

Endorsed: Filed Nov. 5th, 1859.
WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the eighth day of November, in the year last aforesaid, came the said plaintiff in error, by his said attorneys, and sued out of the clerk's office of said court his writ of error in said entitled cause, which said writ of error is in the words and figures following, to wit:—

(*Writ of Error.*)

United States of America, Northern District of Illinois.

The United States of America to the Judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings and also in the rendition of a judgment in a plea which is in the said court before you, between Charles G. Wheeler, plaintiff, and Andrew Mason, defendant, a manifest error hath happened to the great damage of the said Andrew Mason, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment be therein given that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record

and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago this eighth day of November, A. D. 1859, and of our independence the 84th year.

[L. S.] WM. H. BRADLEY, Cl'k.

Endorsed: Filed November 8th, 1859.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the fourteenth day of November, in the year last aforesaid, came again the said plaintiff in error and filed in the office of the clerk of said court his bond in said entitled cause, which said bond is in the words and figures following, to wit:—

Know all men by these presents, that we, Andrew Mason, of the city of Chicago, county of Cook, and State of Illinois, as principal, and John Hughes and Charles C. Welch, of the same place, as sureties, are held and firmly bound unto Charles G. Wheeler, of the commonwealth of Massachusetts, in the penal sum of two thousand dollars, lawful money of the United States, for the payment whereof we do firmly bind ourselves, our heirs, executors and administrators, firmly by these presents. Witness our hands and seals this 14th day of November, A. D. 1859.

The condition of the above obligation is such, that whereas the said Charles G. Wheeler by the consideration of the Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois, in a certain action of ejectment therein pending wherein the above bounden Andrew Mason was defendant, and the said Charles G. Wheeler was plaintiff, on the fifth day of November, A. D. 1859, recovered judgment for the possession of the west one hundred (100) feet, of the south forty (40) feet, of lot ten (10) in block ten (10) in the fractional section fifteen (15), addition to the original town (now city) of Chicago, in the county of Cook and State of Illinois, together with one cent damages and costs of suit; from which said judgment the said Andrew Mason has prosecuted a writ of error to the Supreme Court of the United States next to be holden at Washington, in the District of Columbia, on the first Monday of December next.

Now if the above bounden Andrew Mason shall, in case said judgment shall be affirmed, pay all such costs and damages as shall thereby be awarded against him, and the full value of the rents and profits of such portion of the before mentioned real estate as is occupied by him, said Andrew Mason, from the date of said judgment to the determination of said writ of error, and shall also duly prose-

cute his said writ of error, then this obligation shall be void, otherwise to remain in full force and effect.

ANDREW MASON, [SEAL.]
JOHN HUGHES, [SEAL.]
CHARLES C. WELCH. [SEAL.]

Approved,
THOMAS DRUMMOND.

Endorsed: Filed November 14th, 1859.
WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the sixteenth day of November, in the year last aforesaid, came again the said plaintiff in error and sued out of said court his process of citation in said entitled cause, which said citation is in the words and figures following, to wit:—

United States of America, ss.

To Charles G. Wheeler, greeting: You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Northern District of Illinois, wherein Andrew Mason is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, one of the justices of said court, this sixteenth day of November, A. D. 1859.
THOMAS DRUMMOND.

Copy served on us, Nov. 16, 1859.
SHUMWAY, WAITE & TOWNE,
Plaintiff Wheeler's Att'ys.

Endorsed: Filed Nov. 30th, 1859.
WM. H. BRADLEY, Cl'k.

Northern District of Illinois, ss.

I, William H. Bradley, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a full, true and complete transcript of the record and proceedings had in the cause wherein Charles G. Wheeler was plaintiff and Andrew Mason was defendant, as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this seventh day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth year.

[SEAL.] WM. H. BRADLEY, Cl'k.

And the said Andrew Mason comes, when, &c., and says, that in the record and proceedings aforesaid there is manifest error in this, to wit:—

1st. Said Circuit Court erred in refusing said motion to file said plea in abatement.

2d. Said court erred in admitting in evidence said transcript of a complaint, and writ of possession in said action of forcible detainer. They could in no event be evidence for the purpose for which they were introduced without showing the judgment authorizing said writ, and the return of the officer showing a change of possession under it.

3d. Said court erred in permitting said deed from said Wheeler, senior, to said Wheeler, junior, to be used in evidence after it appeared from Wheeler's own testimony that there had been no delivery of said deed.

4th. Said court erred in its instructions to said jury.

5th. Said court erred in refusing to set aside the verdict of said jury, and grant a new trial at common law. For all which errors, and others manifest in said record, he prays that said judgment may be set aside, disannulled and held for nought, &c.

C. BALLANCE, for Pl'ff in Error.

Filed 10th Dec., 1859.